

Ohio Elections Commission

Geauga County Board of Elections, Complainant :
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:
vs. : Case No. 2010R-275
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Edward Corsi & :
Geauga Constitutional Council, Respondents :

Decision and Finding

Syllabus

This matter was heard by the Commission on April 28, 2011, pursuant to the filing of a complaint with the Commission by the Geauga County Board of Elections. The complaint alleged 2 violations against the respondents. To commence the proceedings, the Commission was presented with the statement of the case as contained in the complaint. An Answer and Affirmative Defense and a Motion for Judgment on the Pleadings were submitted on behalf of the respondents. At the conclusion of the hearing by a preponderance of the evidence, the Commission found that the Geauga Constitutional Council (GCC) was a Political Action Committee (PAC) as that term is defined in Ohio Revised Code §3517.01(B)(8) and that there had been violations of R.C. §3517.10(A) and §3517.10(D) as alleged in the complaint. This finding of a violation is due to the fact that, as a PAC, the GCC was obligated to file a Designation of Treasurer with the appropriate filing office to establish itself as a PAC and then to subsequently file the campaign finance reports required of a properly registered PAC, neither of which filings were made. This written decision states the basis for the Commission's determination of the case made on that date and is the final appealable order issued to the parties.

Statement of the Case

The evidence presented to the Commission from the complaint, the responses, supplementary affidavits offered to the Commission and the testimony given at the Commission hearing showed that the respondent, Edward Corsi, is an individual who, in conjunction with others, has acted as respondent, Geauga Constitutional Council (GCC). The GCC maintains an active website that offers comment on political

and civic issues in and around Geauga County, Ohio, and published a certain pamphlet that stated the Mission Statement of the organization. In addition, the pamphlet shared some of the information that was contained on the website. The GCC also conducted group meetings, or get-togethers, at which invited persons would “throw around ideas and information on political issues or people who held office”. (Transcript, Page 67) In addition, it was revealed that the GCC hosted events at which public speakers of local and national reputation addressed attendees who paid a fee to the GCC for the opportunity to hear these speakers and at which multiple persons assisted in various ways to conduct these events.

The essential issues before the Commission were whether there was one or more persons who worked with or aided Mr. Corsi in conducting the activities of the GCC, whether the published materials that were produced on the website and the pamphlets were “express advocacy” or “issue advocacy” as those terms are used in the political arena, and what is the “primary or major purpose” of the group. Mr. Corsi argued that the GCC was entirely his organization emphasizing this by responding to questions and stating that “the Geauga Constitutional Council is me, and me only.” (Tr. P. 64)

During the hearing, the Commission considered testimony offered by a witness for each of the parties to the case. Mr. Edward Ryder, member of the Geauga County Board of Elections, testified on behalf of the complainant, and Mr. Corsi testified on his own behalf and that of the GCC. In addition, the parties allowed the submission of affidavits from Jean Coe, Senator Timothy J. Grendell, Thomas Teare, and Judy Zamlen Spotts, along with two separate affidavits from Mr. Corsi, one filed at the hearing and the other filed at an earlier time in the consideration of the case.

The testimony of Mr. Ryder gave an overview of the Board’s case. His testimony included how the matter came to the attention of the Board after the GCC hosted a booth at the Geauga county fair and the pamphlet that was circulated by the GCC at the County Fair. He stated that the pamphlet contained the mission statement of the GCC, and that it was brought to his attention that the pamphlet did not contain the proper disclaimer required by Ohio election law. From that, he discovered that no Designation of Treasurer or other campaign finance filings had been made with the Geauga County Board of Elections on behalf of the GCC. He also recounted his attendance at one of the events hosted by the GCC. He recalled the speech that he heard while in attendance at that event and that there were persons who assisted Mr. Corsi in hosting the event, who circulated literature and received admission payments on behalf of the GCC from the persons who attended the event.

Mr. Corsi testified at length that the GCC was solely him and his organization. He also testified that all of the writings and opinions were his and that he was merely exercising his constitutional rights. He refuted the affidavit of Ms. Coe and stated that there was no membership in the GCC and that Ms. Coe was not a regular attendee at the “get-togethers” (Tr. P. 67) before she went on to establish her own organization. Commission members questioned Mr. Corsi in depth on the pertinent subjects at issue in this case.

Analysis

As a part of his opening argument, Maurice A. Thompson, Esq., counsel for Mr. Corsi and the GCC, discussed the various activities that have been conducted by the GCC and exhorted the Commission to consider the different functions that Mr. Corsi carried out under the banner of the GCC and to consider whether those separate functions comport with the definition of a PAC under Ohio law. Mr. Thompson identified three key elements for the Commission to consider during its deliberations (Tr. P. 13):

1. Is there more than one person in each of those functions?
2. Is there express advocacy that can be regulated in each of those functions? and
3. Is money actually being spent to elect or defeat a candidate in any of those functions?

As it conducted its deliberations, the Commission did consider each of the elements put forth by Mr. Thompson, but rather than simply accepting item 3., as proposed by Mr. Thompson, (as there is no mention of money in the definition of a PAC), the Commission strictly interpreted the terms of the definition contained in R.C. §3517.01(B) (8) which states that a “political action committee”

means a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political party, a campaign committee, or a legislative campaign fund.

Two or More Persons

The primary contention by Mr. Corsi throughout the proceedings of this case was that the GCC was “me, and me only” (Tr. P. 64). Upon consideration of the entirety of the testimony, the Commission could not accept this contention. The Commission determined that the GCC was comprised of more persons than just Edward Corsi, and was actually a combination of two or more persons as required by the statute.

The first piece of evidence that the Commission considered was the Mission Statement of the GCC that is contained in the pamphlet that was circulated at the Geauga County Fair. The Mission Statement states for the GCC that

Our mission and purpose to protect our great County by promoting Constitutional rights, freedom, and personal responsibility by educating the general public and elected servants ... [Emphasis added]

In addition, other statements in the pamphlet alluded to multiple persons sharing responsibility for the flyer. On the third page under the heading "Most UnWanted", the following phrases are used:

1. On line 2 – "... who we feel are misrepresenting themselves to you..."
2. On line 10 – "We believe the following people deserve this notoriety ..."
3. At the bottom of the page – "Note: The GCC realizes this may anger some of you. We are sorry but can't help that. We publicize this ..."

In reviewing the totality of the pamphlet, there is no reference to the words "I" or "me", or any other term that would indicate that this pamphlet was produced by an individual, acting in his own capacity and without any assistance or participation by other persons.

Throughout his testimony, Mr. Corsi often used plural terms when describing the GCC. During direct examination on repeated questioning from his counsel Mr. Corsi attributed such usage to "loose terminology" (Tr., P.49) and that its "just because it's the verbiage I'm using, not for any other reason." (Tr. P. 49) Yet later in his testimony, when answering a question about the public events and the need to charge a fee, he responds by saying that "(w)hen we bring in national speakers, we have to charge something ... (w)e have to cover dinner, But all of our events are free otherwise." [Emphasis added] (Tr. P. 53).

Under cross examination by Sheila Salem, Esq., counsel for the complainant, Mr. Corsi admitted that he used Ms. Spotts as the mail location for checks to be paid for those public speaking events, explaining it as a desire to maintain his anonymity and not to publish his address. Commission member Harvey Shapiro followed up on this line of questioning and in responding, Mr. Corsi acknowledged that Ms. Spotts agreed to receive the checks on his behalf for the GCC. (Tr. Pp. 57-58)

The Commission also considered the affidavits of Mr. Teare and Ms. Spotts. Paragraph 5 of Mr. Teare's affidavit and paragraph 6 of Ms.

Spotts' affidavit both contain the same statement, "I am not a member of the Geauga Constitutional Council ("GCC") because GCC has no members. There is no membership criteria." While these statements and others that portray Mr. Corsi's total control of the website are certainly of great import, later in their affidavits each person states that they "produced and handed out pamphlets and flyers containing political content on behalf of 'Gauga Constitutional Council'", "I have helped to organize events promoted as put on by the Geauga Constitutional Council", and "When Ed Corsi, I and others invite a speaker into town and hold an event, we use the name 'Gauga Constitutional Council' to describe ourselves ..."

As further evidence of Ms. Spotts' participation with the GCC, the complainants submitted as a part of their Exhibit 'B', a page from the GCC website that contained an editorial opinion letter penned by Ms. Spotts indicating that it was posted by the GCC.

There was much testimony that fund raisers were held by the GCC. Mr. Corsi indicated that it was expensive to hold these events because you had to reimburse the speakers at the events, and that there were expenses for the room in which the event was held and other costs. Mr. Corsi also testified that he had to make special arrangements to cash some of the checks that were made out to GCC for some events and at other events he instructed attendees to make their checks out to 'cash'. While financial contributions are not a part of the definition of what creates a PAC, there was testimony that moneys were received that promoted the GCC's operations from numerous sources. Mr. Corsi testified that he was required to open a new checking account so that he could cash checks that were received by the GCC (Tr. P. 62). All of this is further indication that the GCC was comprised of "two or more persons" as required by Ohio law.

During its deliberations, Commission members relied on all of these elements to determine that the GCC is comprised of "two or more persons" as mandated in the statutes. (Tr. Pp. 91-96, 105)

Primary or Major Purpose of which is to Support or Oppose

The second portion of the definition of a PAC under Ohio law is whether the activities of the organization fulfill the "primary or major purpose" element. No specific definition of either word is contained in the statute to help define that phrase, but according to Webster's New World Dictionary the terms are defined as follows:

1. Primary – first in order of time or development; of first rank, importance, or value
2. Major - greater in dignity, rank, importance, or interest; greater in number, quantity, or extent; prominent or significant in size, amount, or degree (Webster's New World Dictionary, 2nd College Edition, 1986)

The appropriate way to judge an organization, and to help determine whether that political organization meets this portion of the definition, is through its self-proclaimed Mission Statement. So the Commission looks again to the pamphlet that is complainant's exhibit A. A portion of this pamphlet is again reprinted below.

Our mission and purpose to protect our great County by promoting Constitution rights, freedom, and personal responsibility by educating the general public and elected servants through letters in various publications, flyers, ads, web site, e-mail blasts, public forums and working with public servants on various projects; ... **supporting and helping elect** GOD fearing people for office ...
[Emphasis in original]

The above highlighted portion of the Mission Statement is the third item that is given emphasis on the list that comprises the action elements of the mission statement. While it is logical to conclude that by listing this element third in the hierarchy of its actions the GCC does not consider this element the primary mission of the organization, as a primary mission would be "first in order" or "of first rank". Nonetheless, it is certainly reasonable to assert that by including this item among the only three action items in the Mission Statement of the GCC that this is a major purpose of the organization. By listing "supporting and helping elect" candidates as one of only three action items in this Mission Statement, this certainly must be judged as something that is "greater in dignity, rank, importance, or interest" or something that is "prominent or significant in size, amount, or degree" .

As further evidence that one of the GCC's major purposes is to support or oppose a candidate or issue and that meets the definition of a PAC, the Commission then looks to the fifth page of the pamphlet that uses the term "Voters Guide" immediately above the phrase "Most Wanted". The first paragraph of this page begins by saying, "The GEAUGA CONSTITUTIONAL COUNCIL supports and recommends all the following people ..." In reviewing the listing of names that is contained on this page there are three persons (Judy Caputo, Mike Joyce and Michael Brown) whose listing include the phrase "up for re-election".

An organization that publishes and circulates a "Voters Guide" and contemporaneously explicitly recommends and supports candidates and/or issues is an organization whose purpose, intent and actions can only be determined to be supporting candidates and/or issues as is required by the statute. The phrases used throughout this pamphlet certainly indicate the GCC's support for those persons who are candidates and are "Most Wanted".

Page three of the pamphlet contains the names of persons who are listed as the “Most UnWanted” and “Posers for Voters”. The first line of the first paragraph on this page states that, “Many incumbents and contenders for office in Geauga County are R.I.N.O.’s (Republicans In Name Only), who we feel are misrepresenting themselves to you, just to get or stay elected.” Again, the Commission identifies such phrases as “contenders for office” and “to get or stay elected” as examples of key phrasing that identifies a major purpose of the GCC as supporting or opposing candidates. Similar to the previous paragraph, an organization that publishes a “Voter’s Guide” and contemporaneously explicitly opposes candidates and/or issues is an organization whose purpose, intent and actions can only be determined to be opposing candidates and/or issues as is required by the statute.

Further examples are included on the website of the GCC. Page 1 of 5 of complainant’s Exhibit B contains information on Judge Eugene Lucci that discusses an upcoming fundraiser that is to be held on behalf of the Judge. The second paragraph of the article starts out by saying that, “He is a candidate for the 11th DISTRICT Court of Appeals ...” The fourth paragraph of this same article states that, “There are VERY FEW candidates for Judge worth supporting and I feel he is one of the very few.”

Complainant’s Exhibit C contains a letter from Judy K. Zamlen-Spotts that expresses her encouragement to voters to vote “no” on an upcoming library tax levy and even goes on to encourage a “no” vote on all levies at an upcoming election. In a note from Mr. Corsi that immediately follows Ms. Spotts’ letter he concludes by saying, “sorry, but I agree with Judy NO MORE LEVIES....NOT ONE!” Lastly, on Page 4 of 5 of the exhibit attached to the complaint. Near the bottom of the page under the heading, “OHIO THIRD FRONTIER PROGRAM”, after the words “Posted By: Geauga Constitutional Council”, and the date stamp for the posting, the following phrase is in bolded and capitalized letters, “NO...NO...NO ON STATE ISSUE 1”. [Emphasis in original] Certainly such language that expressly advocates Mr. Corsi’s position on the website of the GCC in opposition to such tax issues in such a prominent position must be considered significant in degree and a major element in the organization’s activities.

Commission members identified all of these elements as evidence that the GCC’s major purpose is to support or oppose candidates or issues. (Tr. Pp. 100-104, 108) It is apparent to the Commission in reviewing all of the examples that are included in GCC’s materials that a major purpose of the GCC is to support or oppose candidates and issues.

Influence the Result of any Election through Express Advocacy

The phrase “express advocacy” is a convenient way of expressing the United States Supreme Court’s holding in the seminal case of *Buckley v. Valeo*, 424 U.S. 1 (1976). The *Buckley* court, in footnote 52, limited the application of the Federal Election Campaign Act to “... communications containing express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject’” or “express advocacy” for or against a candidate or ballot issue.

In reviewing the materials included in the complaint and presented at the hearing that were taken from the GCC website, a substantial number of examples are evident. We previously discussed the phrase that was used concerning Judge Lucci (“There are VERY FEW candidates for Judge worth supporting and I feel he is one of the very few.”) and the statement concerning State Issue 1 (“NO...NO...NO ON STATE ISSUE 1”). In the pamphlet under the VOTER GUIDE and the Most Wanted list, the first sentence states, “The GEAUGA CONSTITUTIONAL COUNCIL supports and recommends all the following people ...” some of whom were on an upcoming ballot. The copies of the pages from the website attached to the complaint also contain the following phrases, “RON YOUNG FOR OHIO HOUSE OR REPRESENTATIVES”, “SANDRA O’BRIEN....OUR GAL FOR SECRETARY”, and “SANDRA O’BRIEN FOR OHIO SECRETARY OF STATE”. All of these statements included in the GCC’s materials use strong words to expressly advocate the election or defeat of the respective candidates and issues that are on a ballot.

There could be no clearer indication of express advocacy as there is contained in these statements. Commission members considered all of this evidence in determining that the GCC used “express advocacy” to complete all of the requisite elements to establish a PAC under Ohio law. (Tr. Pp. 93, 97-98, 100-101, 104)

Conclusion

After reviewing all of these elements, the Commission concludes that the Geauga Constitution Council is a political action committee as that entity is defined in R.C. §3517.01(B)(8). While Mr. Corsi is certainly a critical individual in the operations of the GCC, the evidence shows that there are more than 2 persons involved in the operations of the GCC that helped to carry out its activities. There is overwhelming evidence that a major purpose of the GCC is to support or oppose candidates or issues as demonstrated in the Mission Statement of the group and throughout the materials authored on behalf of the GCC. Lastly, beginning with the pamphlet that contained the Mission Statement and on through the other materials presented as evidence to the Commission, the GCC repeatedly used phrases such as “for”, “no” and “support” that are words of express advocacy.

There can be no doubt that the Geauga Constitutional Council meets all of the requirements to be considered a PAC under Ohio law.

Therefore, by a preponderance of the evidence, the Commission finds that the Geauga Constitutional Council is a Political Action Committee as that term is defined in Ohio Revised Code §3517.01(B) (8) and that as a political action committee the GCC was required to file a Designation of Treasurer and other campaign finance filings as required of a PAC by Ohio law and that by failing to do so there are violations of R.C. §3517.10(A) and §3517.10(D) as alleged in the complaint. As the penalty for these violations, the Commission finds that there is good cause present not to impose a fine or refer the matter for further prosecution.

The Commission considers this Decision and Finding, a confirmation of the decision made at the Commission's meeting of April 28th, 2011 and approved and issued on the 9th day of June, 2011, its final appealable order in this matter and finds that there is no just reason for delay pursuant to Civil Rule 54(B).

Ohio Elections Commission

Bryan Felmet
Chair